

DATED 20th December 2024

(1) EAST SUFFOLK COUNCIL

-and-

(2) SUFFOLK COUNTY COUNCIL

-and-

(3) W. M. TUBBY LIMITED

**AGREEMENT UNDER SECTION 106 OF THE
TOWN AND COUNTRY PLANNING ACT 1990**

relating to the development of land to the north of Hall Lane and south of Union Lane, Oulton

DC/23/3191/FUL

 **HOWES
PERCIVAL**

Howes Percival LLP

Flint Buildings

1 Bedding Lane

Norwich, NR3 1RG

JZM/247750.0001

THIS AGREEMENT is made this 20th day of December 2024

BETWEEN

- (1) **EAST SUFFOLK COUNCIL** of East Suffolk House, Station Road, Melton, Woodbridge IP12 1RT ("Council"); and
- (2) **SUFFOLK COUNTY COUNCIL** of Endeavour House, 8 Russell Road, Ipswich, Suffolk, IP1 2BX ("County Council"); and
- (3) **W. M. TUBBY LIMITED** incorporated and registered in England and Wales with company number 00564700 whose registered office is at Number Sixty One, Alexandra Road, Lowestoft, Suffolk NR32 1PL ("Owner")

Jointly to be referred to as "the Parties"

~~**BETWEEN**~~

RECITALS

1. The Council is the local planning authority for the purposes of the Act for the area in which the Site is situated and the authority who is entitled to enforce the obligations contained in this Deed.
2. The County Council is the local highway authority the local education authority and is also a local planning authority for the purposes of the Act for the area in which the Site is situated and by whom the obligations contained in this Deed are enforceable.
3. The Owner is the freehold owner of the Site which is registered at the Land Registry with title number SK413964, SK327575, SK376931, and part of SK272898
4. The Application has been made to the Council.
5. The Parties have agreed to enter into this Deed in order to secure the planning obligations and other covenants contained in this Deed in the event the Planning Permission is granted.

NOW THIS DEED WITNESSES AS FOLLOWS:

OPERATIVE PROVISIONS

1 **DEFINITIONS**

For the purposes of this Deed the following expressions shall have the following meanings:

"100% Staircaser" means a lessee of a Shared Ownership Dwelling under a Shared Ownership Lease who has exercised their right under that lease to purchase 100% of the equity in the Shared Ownership Dwelling or the owner of a Shared Equity Dwelling who has exercised their right to purchase the remaining equity.

"Act" the Town and Country Planning Act 1990 (as amended).

"Additional First Homes Contribution" means in circumstances where a sale of a First Home other than as a First Home has taken place in accordance with and following paragraphs 1.19 and 1.21.2 of the Second Schedule, the lower of the following two amounts:

- 30% of the proceeds of sale; and
- the proceeds of sale less the amount due and outstanding to any Mortgagee of the relevant First Home under relevant security documentation which for this purpose shall include all accrued principal monies, interest and reasonable costs and expenses that are payable by the First Homes Owner to the Mortgagee under the terms of any mortgage but for the avoidance of doubt shall not include other costs or expenses incurred by the First Homes Owner in connection with the sale of the First Home

and which for the avoidance of doubt shall in each case be paid following the deduction of any SDLT payable by the First Homes Owner as a result of the Disposal of the First Home other than as a First Home.

"Affordable Housing Contribution" means a proportionate sum (BCIS Index Linked) calculated in accordance with the Affordable Housing Commuted Payment Schedule appended to this Deed at Annex 2 as a contribution in lieu of the full policy

requirement for onsite Affordable Housing to be used towards the provision of Affordable Housing through the acquisition of land or the construction or development of new properties or the purchase or refurbishment of existing market properties in East Suffolk;

"Affordable Housing Mix"

unless otherwise agreed in writing with the Council the mix of Affordable Housing comprising 50% Affordable Rental Units 25% Shared Ownership Dwellings and 25% First Homes (rounded down where this results in a fraction of a dwelling up to and including .5 and rounded up if above 0.5) as set out indicatively in the Affordable Housing Table or such other mix (such proposal to reflect the Council's up to date strategic housing market assessment and specific local needs as determined and agreed by the Council) approved as part of the Affordable Housing Scheme.

"Affordable Housing Phase"

means all Developer Phases of the Development excluding Phase 1 and Phase 2 as shown on the Phasing Plan.

"Affordable Housing Scheme"

unless otherwise agreed in writing by the Council means a scheme to be submitted and approved by the Council for the provision of the Affordable Housing Units such Affordable Housing Scheme shall include details of:

- location, size and design details of the Affordable Housing Units (to the extent these are not provided through any application for reserved matters);
- the proposed Registered Provider (if known);
- full details of the Affordable Housing Mix;
- such other information as the Council may reasonably require to enable approval of the Affordable Housing Scheme.

"Affordable Housing Table"

Means the table in part 1 of the Second Schedule indicating the house types and tenure types of the

Affordable Housing Mix unless otherwise agreed in writing with the Council;

"Affordable Housing Units" means 20% of the total number of Dwellings to be provided on the Site pursuant to the Planning Permission to be Occupied as Affordable Housing as indicatively set out in the Affordable Housing Table.

"Affordable Housing" subsidised housing that will be available to persons who cannot afford to rent or buy housing generally available on the open market in accordance with and defined in Annex 2 of the NPPF.

"Affordable Rental Units" Affordable Housing let by a Registered Provider to Eligible Persons where the rent level is capped at 80% of the local market rent (including any service charges, where applicable) and within local housing allowance rates, or as otherwise agreed with the Council in writing;

"Allocation Policy" means the policy and procedure adopted by the Council to determine the eligibility and priority for allocation of the Affordable Rental Units.

"Application" the application for the Development submitted to the Council for the Development and allocated reference number DC/23/3191/FUL.

"Armed Services Member" means a member of the Royal Navy the Royal Marines the British Army or the Royal Air Force or a former member who was a member within the five (5) years prior to the purchase of the First Home, a divorced or separated spouse or civil partner of a member or a spouse or civil partner of a deceased member or former member whose death was caused wholly or partly by their service

"BCIS Index Linked" the increase in any sum referred to in this Deed by an amount equivalent to the increase in the BCIS Index calculated in accordance with Clause 11 of this Deed

"BCIS Index"	the All In Tender Price Index published by the Building Cost Information Service or any successor organisation or (if that index shall cease to be published or is otherwise unavailable) such alternative basis of indexation as may be agreed between the Parties.
"Chargee"	any mortgagee or chargee of the Registered Provider or the successors in title to such mortgagee or chargee or any receiver or manager (including an administrative receiver) appointed pursuant to the Law of Property Act 1925.
"Commencement"	the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purpose) operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and "Commence" shall be construed accordingly.
"Compliance Certificate"	means the certificate issued by the Council confirming that a Dwelling is being disposed of as a First Home to a purchaser meeting the Eligibility Criteria (National) and unless paragraph 1.15 of Schedule 2 applies the Eligibility Criteria (Local);
"Custom and Self-build Design Code"	A document that provides written and illustrated rules that establish the design parameters of a development and of each Custom and Self-build Plot, and which shall address: <ul style="list-style-type: none"> a) Layout, b) Plot size and shape, c) Developable footprint,

- d) Building height or number of storeys,
- e) Orientation,
- f) Landscaping,
- g) Boundary treatment,
- h) Material palette,
- i) Number and location of car parking and cycle storage spaces, and
- j) Refuse storage.

"Custom and Self-build Dwelling"

A dwelling which meets the definition in section 1 of the Self-build and Custom Housebuilding Act 2015 (as amended)

"Custom and Self-build Plot"

A Fully Serviced Plot of land upon which a Custom and Self-build Dwelling is to be constructed such plots comprising 5% of the total number of Dwellings on the Development as shown on the Phasing Plan in Phases A-I (unless otherwise agreed in writing with the Council)

"Custom and Self-build Register"

The Council's register of persons seeking to acquire a Custom and Self-Build Plot pursuant to section 1 of the Self-build and Custom Housebuilding Act 2015.

"Custom and Self-build Sale Contract"

A contract or contracts for the sale of a Custom and Self-build Plot which is conditional upon the construction of the Custom and Self-build Dwelling.

"Custom and Self-build Statement"

A statement detailing how the homes to be built on the Custom and Self-build Plots shall meet the definition of a Custom and Self-build Dwelling

"Default Interest Rate"

4% per annum above the base lending rate of the Bank of England from time to time unless otherwise provided by this Deed.

"Developer Phase"

means a Phase of the Development as identified on the Phasing Plan save for a Phase on which Custom and Self-build Plots are to be provided

"Development" the development of the Site for up to 159 no. dwellings, associated infrastructure, and public open space and a pre-school site (if required) (applied for in outline) plus 26 no. dwellings, vehicular access, associated infrastructure, and public open space (applied for in full) pursuant to the Planning Permission.

"Discount Market Price" means a sum which is the Market Value discounted by at least 30%.

"Disposal" means a transfer of the freehold or (in the case of a flat only) the grant or assignment of a leasehold interest other than:

- (a) a letting or sub-letting of a First Home in accordance with paragraphs 1.27 to 1.30 of Part 1 of Schedule 2
- (b) a transfer of the freehold interest in a First Home or land on which a First Home is to be provided before that First Home is made available for occupation except where the transfer is to a First Homes Owner
- (c) an Exempt Disposal

and "Dispose" "Disposed" and "Disposing" shall be construed accordingly

"Dwelling" any dwelling (including a house flat maisonette or bungalow and including both Affordable Housing Units and Open Market Dwellings) to be constructed in accordance with the Planning Permission.

"Eligibility Criteria (Local)" means local criteria met in respect of a purchase of a First Home if:

- (a) the purchaser meets the criteria in the Local Connections Cascade (or in the case of a joint purchase at least one of the joint purchasers meets the Local Connections Cascade); and/or

(b) the purchaser meets any further local criteria in effect at the date of the relevant Disposal of a First Home

it being acknowledged that at the date of this Deed the Council has only prescribed Eligibility Criteria (Local) in respect of (a) and unless the purchaser is (or in the case of a joint purchase at least one of the joint purchasers is) an Armed Services Member.

"Eligibility Criteria (National)"

means criteria which are met in respect of a purchase of a First Home if:

- (a) the purchaser is a First Time Buyer (or in the case of a joint purchase each joint purchaser is a First Time Buyer); and
- (b) the purchaser's annual gross income (or in the case of a joint purchase, the joint purchasers' joint annual gross income) does not exceed £80,000 or such other sum as may be published for this purpose from time to time by the Secretary of State and is in force at the time of the relevant Disposal of the First Home.

"Eligible Person"

a person or persons on the housing waiting list maintained by the Council or who is otherwise approved by the Council as being in need of separate or alternative accommodation and unable to buy housing generally available on the open market.

"Exempt Disposal"

means the Disposal of a First Home in one of the following circumstances:

- (a) a Disposal to a spouse or civil partner upon the death of the First Homes Owner
- (b) a Disposal to a named beneficiary under the terms of a will or under the rules of intestacy following the death of the First Homes Owner
- (c) a Disposal to a former spouse or former civil partner of a First Homes Owner in accordance with the terms of a court order, divorce settlement or other

legal agreement or order upon divorce, annulment or dissolution of the marriage or civil partnership or the making of a nullity, separation or presumption of death order

- (d) a Disposal to a trustee in bankruptcy prior to sale of the relevant Dwelling (and for the avoidance of doubt paragraph 1.33 of Part 1 of Schedule 2 shall apply to such sale)

provided that in each case other than (d) the person to whom the Disposal is made complies with the terms of paragraph 1.26 of the Second Schedule.

"First Homes Owner"

means the person or persons having the freehold or leasehold interest (as applicable) in a First Home other than:

- (a) a developer or other entity to which the freehold interest or leasehold interest in a First Home or in the land on which a First Home is to be provided has been transferred before that First Home is made available and is disposed of for occupation as a First Home; or
- (b) the freehold a tenant or sub-tenant of a permitted letting under paragraph 1.27 of the Second Schedule.

"First Homes"

means Dwellings which may be disposed of as a freehold or (in the case of flats only) as a leasehold property to a First Time Buyer at the Discount Market Price and which on its first Disposal does not exceed £250,000 or such other amount as may be set locally or published from time to time by the Secretary of State;

"First Time Buyer"

means a first time buyer as defined by paragraph 6 of Schedule 6ZA to the Finance Act 2003.

"Fully Serviced Plot"	A Custom and Self-build Plot that has access to a public highway and has connections for electricity, water, waste water and telecommunications.
"Homes England"	The non-departmental public body responsible for creating thriving communities and affordable homes in England and which is the Regulator of Social Housing within the meaning of section 81 of the Housing and Regeneration Act 2008 or such other body that may replace it in either function;
Local Connections Cascade	The local connections criteria to be applied to each and every let or sale of an Affordable Housing Unit as set out in Annex A.
"Management Company"	means a company or body who may take over responsibility for the future maintenance of the On-Site Public Open Space.
"Market Value"	means the open market value as assessed by a Valuer of a Dwelling and assessed in accordance with the RICS Valuation Standards (January 2014 or any such replacement guidance issued by RICS) and for the avoidance of doubt shall not take into account any discount in the valuation
"Marketed Appropriately"	Marketing the Custom and Self-build Plots in accordance with the agreed Marketing Strategy for a period of not less than 12 months. This will commence when the Marketing Strategy has been agreed between the applicant and the Council, the Custom and Self-build Plots are Fully Serviced Plots, have defined boundaries, and are available for immediate purchase
"Marketing Period"	A period of not less than 12 months within which the Custom and Self-build Plots shall be Marketed Appropriately.
"Marketing Strategy"	A document setting out the marketing arrangements for each Custom and Self-build Plot, which shall include:

a) The period in which the Custom and Self-build Plots will be Marketed Appropriately;

b) The arrangements on which the Custom and Self-Build Plots will be Marketed Appropriately; This should address:

i. Details of marketing materials. Good quality visual information should be made available, such as drone photos/videos, website content, and inspiration brochures to aid marketing.

ii. Details of marketing and promotional methods. This should include social media; website advertising; database marketing; and information packs as a minimum.

iii. On-site signage. As a minimum the Custom and Self-build Plots must be promoted as Custom and Self-build Plots for sale with signage at the site entrance and by the Custom and Self-build Plots themselves. Information must be displayed at each Custom and Self-build Plot which includes as a minimum the Custom and Self-build Plot number and Plot Passport information. QR codes are encouraged to provide quick access to further information. Custom and Self-build Plots must be clearly demarcated and be in a clear and tidy state. The Owner should set out methods to enable potential plot purchasers to gain safe access into the site to view the Custom and Self-build Plots.

c) The price that each Custom and Self-build Plot will be advertised for, including valuation methodology, derived from an experienced local RICS registered valuer who should have experience of valuing Custom and Self-build Plots;

d) The contact details of the marketing agent. The agent should be experienced in selling Custom and Self-build Plots;

- e) Signposting to specialist custom and self-build mortgage brokers;
- f) Information on 'Help to Build' and any similar initiatives to assist custom and self-builders;
- g) The eligibility criteria that purchasers must comply with to purchase a Custom and Self-build Plot upon which an Affordable Custom and Self-build Dwelling is to be constructed (if applicable);
- h) The site visit arrangements;
- i) The Plot Passport for each custom and self-build plot;
- j) A commitment that the Owner holds a Record of Sales Enquiries for each Custom and Self-build Plot, which will be provided to the Council upon request;
- k) The arrangements for the delivery of any Custom and Self-build Plots not taken up after the minimum 12 months marketing period; and
- l) Any alternative or additional marketing in the event that interest in a Custom and Self-Build Plot is low.

"Mortgagee"

means any financial institution or other entity regulated by the Prudential Regulation Authority and the Financial Conduct Authority to provide facilities to a person to enable that person to acquire an Affordable Housing Unit including all such regulated entities which provide Shari'ah compliant finance for the purpose of acquiring an Affordable Housing Unit.

"Nomination Agreement"

means an agreement to be entered into by the Council and the Registered Provider in respect of rights for the Council to nominate Eligible Persons for the Affordable Rental Units substantially in accordance with the nomination agreement at the Sixth Schedule.

"NPPF"

means the National Planning Policy Framework (December 2024) as amended or any successor document.

<p>“Occupation” “Occupy” and “Occupied”</p>	<p>occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations.</p>
<p>“Open Market Dwelling”</p>	<p>means any Dwelling other than an Affordable Housing Unit.</p>
<p>“On-Site Public Open Space”</p>	<p>such part (or parts) of the Site for use by the general public as public open space to be secured pursuant to the Planning Permission</p>
<p>“On-Site Public Open Space Specification”</p>	<p>means the plan for the delivery of the On-Site Public Open Space (including any SUDS within the On-Site Public Open Space) including the specifications plans and drawings showing but not limited to the layout and design of the On-Site Public Open Space to be agreed in writing with the Council PROVIDING THAT details of any proposed play area and equipment, landscaping, paths and access arrangements, street furniture and fencing to be prepared by or on behalf of the Owner by a suitably qualified and professionally approved person experienced in preparing and reviewing specifications for such open space.</p>
<p>“Phase”</p>	<p>means a phase or sub-phase of the Development as identified on the Phasing Plan (excluding any phase that contains Custom and Self build Plots only).</p>
<p>“Phasing Plan”</p>	<p>the drawing titled “<i>Phasing Plan</i>” and given reference C410 P6 showing the different phases of the Development and annexed at Schedule 1 unless otherwise agreed in writing with the Council or pursuant to the Planning Permission.</p>
<p>“Planning Permission”</p>	<p>the planning permission that may be granted by the Council for the Development pursuant to the Application.</p>

"Plot Passport"	A document that provides information for potential plot purchasers regarding the delivery of a Custom and Self-build Dwelling on the Custom and Self-build Plot, and shall include: the plot location, plot size and shape, any design and development parameters established in a Design Code (if relevant), likely ground conditions, location of servicing connection, community infrastructure levy exemption (if relevant), and plot price.
"Practical Completion"	means the completion of a Dwelling to a standard which is wind and watertight and fit for habitation in terms of heating, plumbing, electrics and sanitation and "Practically Complete" shall be construed accordingly.
"Pre-School Land"	means an area of land of a minimum size of 0.1ha to be used as a pre-school as shown on the plan titled " <i>Site Layout 2052-S1.01 Z</i> " hatched orange and annexed at Schedule 1 unless otherwise agreed in writing with the County Council.
"Pre-School Land Option Period"	the period of 5 years from the first Occupation of the twenty-seventh (27 th) Dwelling.
"Protected Person"	means any person who: <ul style="list-style-type: none"> a) has exercised the right to acquire pursuant to the Housing and Regeneration Act 2008 or any statutory provision for the time being in force (or any equivalent contractual right) in respect of a particular Affordable Housing Unit; b) has exercised any statutory right to buy or preserved right to buy (or any equivalent contractual right) in respect of a particular Affordable Housing Unit; c) a 100% Staircaser; d) any successor in title to a chargee or mortgagee of the persons named in a) – c) above;

e) any mortgagee of a Shared Ownership Dwelling lawfully exercising the mortgagee protection provisions within that Shared Ownership Lease.

"PROW Contribution" means the sum of £8,000 to be used for the PROW Contribution Purposes.

"PROW Contribution Purposes" Means both:

- (i) the investigation of the land ownership of the Site and the altering of the Definitive Map and Statement and the sending of any necessary request to the Secretary of State to gain consent to allow a new public right of way legal order to be made and all related ancillary legal costs and officer time; and/or
- (ii) upgrading the relevant area of the Site up to the necessary standard and connecting PROW Flixton Footpath 6 to the Site and the provision of appropriate signage.

"Qualifying Persons" Means a person or persons unable to buy housing generally available on the open market and whose household income is below £80,000 (or such other amount agreed in writing with the Council in accordance with government policy);

"RAMS Contribution" the sum of £374.29 BCIS Index Linked per Dwelling payable to the Council be used in accordance with the Council's Local Plan Policies and the Appropriate Assessments of the Local Plans, and the Recreational Disturbance Avoidance and Mitigation Strategy Supplementary Planning Document

"Reasonable Consideration" offer prices from Registered Providers which give the Owner a reasonable consideration having regard to current market conditions in the Disposal of Affordable Housing of a similar type and location by Registered

Providers on a grant free basis via Section 106 Agreements.

"Record of Sales Enquiries"

A record of enquiries made by individuals in relation to each plot which shall include:

- a) Date of enquiry;
- b) Nature of enquiry;
- c) Whether the enquirer visited the site; and
- d) Reason/s why the enquirer did not purchase the plot or find it suitable.

"Registered Provider" or "RP"

For the purposes of this deed means either: -

- a) a body registered as a social landlord pursuant to the provisions of the Housing Act 1996 or a housing association within the meaning of the Housing Associations Act 1985 or;
- b) any person or body or entity which is registered as a provider or social housing in accordance with Section 80(2) and Chapter 3 of the Housing and Regeneration Act 2008 or;
- c) any body, organisation or company which is registered charity with the Charity Commissioners for England and Wales and approved by Homes England or any other body organisation or company approved by the Council and which has objects demonstrably similar to or compatible with or promoting those of a registered social landlord

"Residential Travel Plan"

the travel plan relating to the residents of the Dwellings approved pursuant to the Planning Permission

"RPI Index Linked"

the increase in any sum referred to in this Deed by an amount equivalent to the increase in the RPI Index calculated in accordance with Clause 11 of this Deed.

"RPI Index"

means the "All Items" index figure of the Index of Retail Prices published by the Office for National Statistics from

time to time or any successor organisation or (if that index shall cease to be published or is otherwise unavailable) such alternative basis of indexation as may be reasonably agreed between the Owner and the Council or County Council (as relevant).

"Schedule of Pre-School Land Condition"

Means required condition of the Pre-School Land to be transferred to the County Council set out in the Seventh Schedule to be read alongside Paragraph 1.4 of Part 1 to the Third Schedule and unless otherwise agreed in writing with the County Council

"SDLT"

means Stamp Duty Land Tax as defined by the Finance Act 2003 or any tax replacing it of like effect.

"Secretary of State"

means the Secretary of State for Housing Communities and Local Government from time to time appointed and includes any successor in function;

"Section 106 Officer"

the officer so designated by the Council and any notice required to be served on the Section 106 Officer must be sent or delivered to the Council at the address aforesaid marked for the attention of the Section 106 Officer.

"Shared Equity Dwellings"

means (unless otherwise agreed in writing) Affordable Housing Units to be purchased at no more than 75% Market Value on a freehold basis with a second charge for the remaining 25% in favour of the RP by persons for which the household income does not exceed eighty thousand pounds (£80,000) per annum or such other household income for the time in force in accordance with the terms as set out in Homes England's capital funding guide.

"Shared Equity Sales Procedure"

means the procedure approved in writing by the Council to verify the Market Value of the Shared Equity Dwellings and eligibility of purchasers which may include engagement with the local help to buy agent or the Registered Provider that will hold the second charge in relation to the Shared Equity Dwellings.

"Shared Ownership Dwellings" dwellings to be let on a Shared Ownership Lease to a household for which the household income does not exceed eighty thousand pounds (£80,000) per annum or such other household income for the time in force in accordance with the terms as set out in Homes England's capital funding guide.

"Shared Ownership Lease" a lease or sub-lease of a Shared Ownership Dwelling granted at a premium whereby not less than 10% (ten percent) and not more than up to 75% (seventy five percent) on first purchase of the equitable interest is paid by the tenant on completion of such lease and/or raised by mortgage or charge from a bank or building society and which lease shall include arrangements enabling the tenant to acquire up to 100% (one hundred percent) of the legal and equitable interest in the Shared Ownership Dwelling at some future date or dates and which lease shall allow a rent to be charged on the remainder of the equitable interest not purchased, such rent not to exceed an annual sum calculated at 2.75% of the value of the equity retained by the Registered Provider at the date of the grant of the Shared Ownership Lease subject to annual increases not exceeding Consumer Prices index (CPI) published by the Office for National Statistics (or if such index ceases to be published such other index the Council shall reasonably determine) plus 1% or such other figure permitted by Homes England from time to time and any capital receipt received by the Registered Provider in excess of eighty per cent (80%) as a result of the tenant exercising their right to staircase out to one hundred per cent (100%) shall be retained by the Registered Provider for re-investment in Affordable Housing within the East Suffolk District for a period of five (5) years from the date of receipt and if not spent within five (5) years the Registered Provider shall be able to expend such sums for Affordable Housing elsewhere.

“Site”	means the Land to the North of Hall Lane and South of Union Lane, Oulton as shown edged red on the Site Plan.
“Site Plan”	the plan attached to this Deed at the First Schedule with drawing reference 2052 LOC01 B titled “Red Edged Location Plan”.
“SUDS”	means the sustainable urban drainage system(s) (including all sustainable urban drainage systems features) to be approved pursuant to the Planning Permission and located within the On-Site Public Open Space.
“Travel Plan Evaluation and Support Contribution”	one thousand and two hundred pounds (£1,200.00) per annum RPI Index Linked to provide the County Council suitable resource to engage with the Travel Plan coordinator appointed by the applicant for the Residential Travel Plan.
“Valuer”	means a Member or Fellow of the Royal Institution of Chartered Surveyors being a Registered Valuer acting in an independent capacity;
“Working Day(s)”	Mondays to Fridays (excluding days that in England and Wales are public holidays or on which the Council offices are closed) inclusive.

2 CONSTRUCTION OF THIS DEED

- 2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.

- 2.3 Words of any gender include any other genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and severally unless there is an express provision otherwise.
- 2.5 Unless stated otherwise in this Deed any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 2.6 References to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the Council the successor to its statutory functions.
- 2.7 The headings are for reference only and shall not affect construction.

3 LEGAL BASIS

- 3.1 This Deed is made pursuant to Section 106 of the Act, Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other enabling powers.
- 3.2 The covenants, restrictions and requirements imposed upon the Owner under this Deed create planning obligations pursuant to Section 106 of the Act and are enforceable by the Council and / or the County Council as appropriate in the case of covenants made with it as local planning authority against the Owner and their successors in title.

4 CONDITIONALITY

The obligations set out in the Second and Third Schedule are conditional upon:

- (i) the grant of the Planning Permission; and
- (ii) the Commencement of Development

and the rest of the provisions set out in this Deed shall take effect immediately upon completion of this Deed.

5 THE OWNER'S COVENANTS

- 5.1 The Owner covenants with the Council as set out in the Second Schedule.
- 5.2 The Owner covenants with the County Council as set out in the Third Schedule.
- 5.3 Notwithstanding the provisions of clauses 2.6 and 5.1, the Parties agree that the provisions of paragraph Part 5 of the Second Schedule (save for paragraphs 2.1 and 4) shall only be binding on the Owner of the Biodiversity Land and successors in title to the Biodiversity Land.

6 THE COUNCIL'S AND COUNTY COUNCIL'S COVENANTS

- 6.1 The Council covenants with the Owner as set out in the Second and Fourth Schedule.
- 6.2 The County Council covenants with the Owner as set out in the Third and Fifth Schedule.

7 LEGAL AND MONITORING FEES

- 7.1 Immediately prior to the completion of this Deed the Owner shall pay the Council's and the County Council's reasonable legal costs properly incurred in connection with the negotiation preparation and execution of this Deed.
- 7.2 Within 14 days of the completion of this Deed the Owner shall pay the Council £6,230 towards the monitoring of the performance of the planning obligations that the Owner is required to observe and perform to the Council.
- 7.3 Prior to completion of this Deed, to pay the County Council £476 per trigger towards the monitoring of the performance of the planning obligations that the Owner is required to observe and perform to the County Council.

8 INTEREST ON LATE PAYMENT

If any sum or amount has not been paid to the Council or County Council by the date it is due, the Owner shall pay interest on that amount at the Default Interest Rate. Such interest shall accrue on a daily basis for the period from the due date to and including the date of payment.

9 MISCELLANEOUS

- 9.1 The Owner covenants and warrants to the Council and the County Council that they are the freehold owner of the Site and have full power and capacity to enter into this Deed and that there is no other person having a charge over or any other interest in the Site whose consent is necessary to make this Deed binding on the Site and all estates and interests therein.

- 9.2 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 9.3 This Deed shall be registered as a local land charge by the Council.
- 9.4 Where the agreement, approval, consent or expression of satisfaction is required by the Owner from the Council or the County Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed.
- 9.5 Any notice or written communication to be served or given by one party to any other party under the terms of this Deed shall be deemed to have been properly served or given if delivered by hand or sent by first class post or registered or recorded delivery to the following addresses:
- 9.5.1 Owner: at the address at the beginning of this Deed; and
- 9.5.2 Council: shall be addressed to the Section 106 Officer at the address set out aforesaid;
- 9.5.3 County Council: shall be addressed to the Executive Director of Growth Highways and Infrastructure at the address at the beginning of this Deed; or
- 9.5.4 such other address as may be notified in writing from time to time.
- 9.6 Following the performance and satisfaction of all the obligations contained in this Deed the Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.
- 9.7 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.
- 9.8 Subject to clause 9.7 and clause 17 of this Deed, this Deed shall cease to have effect (insofar only as it has not already been complied with) if the Planning Permission shall be quashed, revoked or otherwise withdrawn or (without the consent of the Owner) it is modified by any statutory procedure or expires prior to the Commencement of Development.
- 9.9 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest PROVIDED THAT neither the reservation of rights or the inclusion of any covenants or restrictions over the Site

in any transfer of the Site (or part of the Site) shall constitute an interest for the purposes of this Clause.

9.10 This Deed shall not be enforceable against owner-occupiers or tenants of Dwellings constructed pursuant to the Planning Permission nor against those deriving title from them.

9.11 The obligations in this Deed shall not be enforceable against a statutory undertaker after the transfer of statutory apparatus (and any land upon or in which the statutory apparatus is situated) by the Owner to that statutory undertaker.

9.12 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.

9.13 Nothing contained or implied in this Deed shall prejudice or affect the rights discretions powers duties and obligations of the Council or the County Council under all statutes by-laws statutory instruments orders and regulations in the exercise of their functions as a local authority.

9.14 The Owner covenants from the date that this Deed takes effect to allow the Council and the County Council, and their duly authorised officers or agents at all reasonable times on reasonable notice to enter into and upon the Site for the purposes of monitoring compliance with the provisions of this Deed and in doing so the Council or the County Council shall have regard to all health and safety requirements when visiting the Site.

9.15 The Owner hereby agrees that any rights to claim compensation arising from any limitations or restrictions on the planning use of the Site under the terms of this Deed are hereby waived.

10 WAIVER

No waiver (whether expressed or implied) by the Council or the County Council or the Owner of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council or the County Council or the Owner from enforcing any of the relevant terms or conditions or for acting upon any subsequent breach or default.

11 INDEXATION

Any sum referred to in the Second Schedule or the Third Schedule (unless the context reads otherwise) shall be increased by an amount equivalent to the increase in the BCIS Index or

the RPI Index (as applicable) from the date hereof until the date on which such sum is payable using the application of the formula $A = B \times (C/D)$ where:

A is the sum payable under this Deed;

B is the original sum calculated as the sum payable;

C is the BCIS Index or RPI Index (as applicable) for the month two (2) months before the date on which the sum is payable;

D is the BCIS Index or RPI Index (as applicable) for the month two (2) months before the date of this Deed; and

C/D is equal to or greater than 1.

12 VAT

- 12.1 All consideration given in accordance with the terms of this Deed shall be exclusive of any VAT properly payable.
- 12.2 If at any time VAT is or becomes chargeable in respect of any supply made in accordance with the terms of this Deed, then to the extent that VAT has not previously been charged in respect of that supply the person making the supply shall have the right to issue a VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly.

13 DISPUTE PROVISIONS

- 13.1 In the event of any dispute or difference arising between any of the parties to this Deed in respect of any matter contained in this Deed such dispute or difference shall be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute and such person shall act as an expert whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the expert shall determine and failing such determination shall be borne by the parties to the dispute in equal shares.
- 13.2 In the absence of agreement as to the appointment or suitability of the person to be appointed pursuant to Clause 13.1 or as to the appropriateness of the professional body then such question may be referred by either part to the president for the time being of the Law Society

for him to appoint a solicitor (or suitable person holding appropriate professional qualifications) to determine the dispute such solicitor or other person acting as an expert and his decision shall be final and binding on all parties to the dispute in the absence of manifest error and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties to the dispute in equal shares.

- 13.3 Any expert howsoever appointed shall be subject to the express requirement that a decision was reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty-eight (28) Working Days after the conclusion of any hearing that takes place or twenty-eight (28) Working Days after he has received any file or written representation.
- 13.4 The expert shall be required to give notice to each of the said parties to the dispute requiring them to submit to him within ten (10) Working Days of notification of his appointment written submissions and supporting material and the other party will be entitled to make a counter written submission within a further ten (10) Working Days.

14 CHANGES IN OWNERSHIP OF THE SITE

The Owner shall give the Section 106 Officer and the County Council within ten (10) Working Days written notice quoting the Council's reference DC/23/3191/FUL of any change in ownership of his freehold interest in the Site or of any other Disposal of any part of the Site occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Site purchased by reference to a plan save that this requirement shall not apply to any such Disposals to individual Dwelling purchasers.

15 NOTICES

- 15.1 The Owner covenants to inform the Council and the County Council by way of written notice within fourteen (14) Working Days following:
- (i) Commencement of Development;
 - (ii) Commencement of each Phase
 - (iii) First Occupation of the first (1st) Dwelling;
 - (iv) First Occupation of 50% of the Dwellings (rounded down); and

- (v) First Occupation of the twenty-seventh (27th) Dwelling; and
- (vi) First Occupation of the final Dwelling.

15.2 The Owner covenants to inform the County Council of the first reserved matters application by way of written notice no later than fourteen (14) days prior to the anticipated submission date of said application.

16 JURISDICTION

This Deed is governed by and interpreted in accordance with the law of England and the parties submit to the exclusive jurisdiction of the courts of England.

17 FUTURE PERMISSIONS

17.1 Nothing in this agreement shall prohibit or limit the right to develop any part of the Site in accordance with any planning permission (other than the Planning Permission or modification, variation or amendment thereof) granted after the date of the Planning Permission.

17.2 In the event that any new planning applications are made in respect of the Development pursuant to section 73 of the Act then with effect from the date that such new planning permission is granted pursuant to section 73 of the Act:

17.2.1 the obligations in this Deed shall in addition to binding the Site in respect of the Planning Permission relate to and bind the Site in respect of any planning permission granted pursuant to Section 73 of the Act; and

17.2.2 the definitions of Development Application and Planning Permission shall be assumed to include references to any applications under section 73 of the Act, the planning permissions granted thereunder and the development permitted by such subsequent planning permissions PROVIDED THAT nothing in this clause shall fetter the discretion of the Council in determining any applications under section 73 of the Act and the appropriate nature and/or quantum of section 106 obligations in so far as they are materially different to those contained in this Deed and required pursuant to a determination under section 73 of the Act whether by way of a new deed or supplemental deed pursuant to section 106 of the Act or a modification pursuant to section 106A of the Act.

18 DELIVERY

The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written.

FIRST SCHEDULE

The Plan

Phasing Plan

Pre-School Land Plan



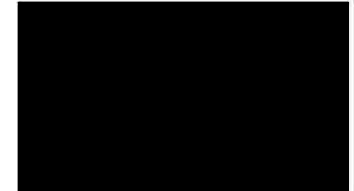
NOTES

The copyright in this drawing is reserved by Eastern Design Architecture Ltd. No part of this drawing may be reproduced without the prior written consent of Eastern Design Architecture Ltd.

Consent does not constitute an endorsement of the products or services of any third party. Eastern Design Architecture Ltd. is not responsible for any loss or damage arising from the use of this drawing.

It is not possible to guarantee the accuracy of the information shown on this drawing.

Approved by Eastern Design Architecture Ltd.



REVISIONS

REV	DATE
A	28/04/22
B	18/10/22

CLIENT	W.M. TUBBY LTD.
PROJECT	RESIDENTIAL DEVELOPMENT, LAND OFF HALL LANE & UNION LANE, OULTON, LOWESTOFT, SUFFOLK.
DRAWING TITLE	RED EDGED LOCATION PLAN
DRAWING STATUS	
SCALES-1:2500@A4	DATE-FEBRUARY 2022

CLIENT
W.M. TUBBY LTD.

PROJECT
**RESIDENTIAL DEVELOPMENT,
LAND OFF HALL LANE & UNION LANE,
OULTON, LOWESTOFT, SUFFOLK.**

DRAWING TITLE
RED EDGED LOCATION PLAN

DRAWING STATUS

SCALES-1:2500@A4 DATE-FEBRUARY 2022

 **EASTERN DESIGN ARCHITECTURE LTD**
info@easterndesignarchitecture.co.uk

DRAWING NO	2052	PROJECT NO	LOC01	REV	B.
------------	------	------------	-------	-----	----



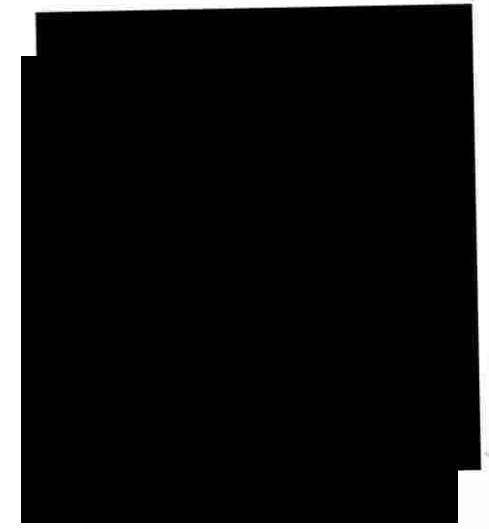
COM REGULATORY AND SAFETY INFORMATION FOR THE CLIENT DEVELOPER

The hazards noted are in addition to normal hazards and risks faced by a competent person when dealing with the type of works detailed on this drawing.

CONSTRUCTION RISKS
1 To be Confirmed
MAINTENANCE/CLEANING RISKS
1 To be Confirmed
DEMOLITION / ADAPTION RISKS
1 To be Confirmed

PHASING PLAN LEGEND

Residential Builds	
[Blue Hatched]	Phase 1
[Purple Hatched]	Phase 2
[Green Hatched]	Phase 3
[Yellow Hatched]	Phase 4
[Light Blue Hatched]	Phase 5
[Light Green Hatched]	Phase 6
[Light Purple Hatched]	Phase 7
[Light Yellow Hatched]	Phase 8
[Light Blue Hatched]	Phase 9
Custom Self-Builds	
[Diagonal Hatched]	All



Important notes:
 All sub-phases for example Phase 6c indicate land dedicated to self-build properties.

Rev	Date	Description	By	Check
P1	18/10/24	Phasing Plan Updated - Self Build Phas	DB	JRS
P2	08/10/24	Site Layout Update October 2024	DB	JRS
P3	04/08/24	Site Layout Update August 2024	LS	JRS
P4	08/04/24	Self Build Sub-phases Added	LS	JRS
P5	25/02/24	Site Layout Change April 2024	LS	JRS
P6	23/05/23	Preliminary	MS	JRS

Copyright: the copyright of this drawing is vested in Scheme Engineering Ltd
 To be read in conjunction with all other project related drawings, reports and
 it shall not be used without permission by anyone for any purpose
 Do not scale this drawing electronically or manually
 Work to figured dimensions only
 All dimensions are to nearest whole unless otherwise
 Do not turn on layers that have been turned off
 Do not trace layers that have been frozen

Client	WM Lubby Ltd
Project	Union Lane Dutton Broad Lowestoft, Suffolk, NR32 3BB
Title	Site Layout Phasing Plan
Scale @ A1	1:1000
Status	Preliminary



Date	Job Number	By	Checked By
June 2023	0225	RB	JRS
Drawing No	Revision		
C410	P6		